

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT & TRADEMARK
DIVISION

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Refund Section - PATENT & TRADEMARK
Office of Finance

706 JAN 24

US PATENT &
TRADEMARK
OFFICE

In Re Application of: Osamu NAGAI et al

Serial No.: 10/030076

Filed: January 10, 2002

Title: GASKET FOR FUEL BATTERY AND
METHOD OF FORMING THE SAME

PATENT & TRADEMARK
US PATENT & TRADEMARK
OFFICE

JAN 24 PM 3:50

REQUEST FOR REFUND

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the above identified case, deposit account 06-1358 has been improperly debited.

By this paper, a credit to deposit account 06-1358 is requested. An explanation of the debiting error is set out below, and copies of all documents in support of this request are attached.

Explanation of Error:

- Large Entity fee charged to Small Entity
- Fee should not have been charged to PTO account because it was paid by check
- PTO miscalculation
- Unknown and unidentifiable PTO charge

Type of Charge and Amount of Refund Requested:

Extension of Time \$ 1020.00

TOTAL REFUND REQUESTED \$ 1020.00

Comments:

On July 27, 2004 a Petition was filed requesting a refund of three months Extension of Time payment of \$950. On May 27, 2005 a Decision on the Petition was received confirming a refund of \$950 was applicable. However, on October 14, 2005, a further \$1020 charge for three months Extension of Time was applied to undersigned counsel's deposit account 06-1358. Since the further fee of \$1020 is a PTO error, it is requested that a refund of \$1020 and \$950 totaling \$1970 be applied to undersigned counsel's deposit account 06-1358.

Attached Documents:

Deposit account statement (highlighted)

Copy Decision on Petition confirming refund was appropriate

Respectfully submitted

JACOBSON HOLMAN PLLC

By John C. Holman

John C. Holman
Registration No. 22,769
400 Seventh Street, N.W.
Washington, D.C. 20004-2218
(202) 638-6666

I.D.: JCH/dls
Folio: P67506US0
Date: January 23, 2006



UNITED STATES PATENT AND TRADEMARK OFFICE

JCH

P67506 US8

DUE 6/3/05
TC 6-3-05



Mailed: 5/27/05.

In re application of

Nagai et al.

Serial No. 10/030,076

Filed: January 10, 2002

For: GASKET FOR FUEL BATTERY AND METHOD OR FORMING THE SAME

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

td

DECISION ON
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO DIRECT THE EXAMINER ISSUE A NEW NON-FINAL OFFICE ACTION.

The instant application is a National Stage Application entry of PCT/JP00/03853 filed on January 10, 2002. On February 20, 2004, a non-final office action was mailed to Applicants. Applicants contacted the examiner on June 10, 2004 and pointed out that two claims were not addressed in the office action. Apparently, a preliminary amendment was lost or misplaced by the office and was never processed. On July 21, 2004, applicants again contacted the examiner. The examiner stated that no new office action would be sent out and that Applicants should respond to the outstanding office action. Applicants file a response to the outstanding office action on July 27, 2004. The instant petition was timely filed simultaneously with this response formally requesting that a new non-final office action be prepared and mailed. In response to the amendment, the examiner required a restriction requirement on August 12, 2004. In the office action, it was stated that any subsequent action would be made final because Applicants had already received a first action on the merits. In an interview on August 30, 2004, the examiner's supervisor told Applicant's representative that the restriction would rescinded in order for a decision to be made with regard to the instant petition.

The instant petition requests that a new non-final office action addressing all of the pending claims be prepared. It is also requested that applicants be given a refund of the extension of time fee paid on July 27, 2004.

DECISION

The request for a new non-final office action to be mailed will be addressed first. Applicants have submitted a copy of the post card receipt from the office dated January 10, 2002. This receipt lists the various papers that were hand carried to the office. Among the papers listed is a preliminary amendment and an Article 19 amendment. Applicants faxed copies of the post card receipt and the amendments filed with the application to the examiner on June 10, 2004. It is clear from these documents that the original papers were either lost or misplaced by the office. It

is unclear as to why the examiner would not immediately issue a new non-final office action due to error on the part of the office.

Next, the request for a refund of the extension of time fee will be addressed. As previously stated, the examiner should have issued a new non-final office action. Applicants should not have been made to file a response to the office action mailed February 20, 2004 because said action was based on an incomplete copy of the claims. The request for a refund of the fees is appropriate.

Lastly, while not specifically addressed in the petition, the restriction requirement made by the examiner on August 12, 2004 will be reviewed. Although the examiner's supervisor rescinded the requirement in an interview on August 30, 2004, it is noted that the restriction requirement was improper on its face. The examiner required a species election and an election between numerous groups under 35 USC 121. It is noted however, that the instant application was filed under 35 USC 371. National stage applications do not fall under 35 USC 121 but rather lack of unity practice should be followed.

Accordingly, the petition is **GRANTED**. The examiner is directed to prepare a new non-final office action addressing all of the pending claims on the merits. In addition, applicants are to be refunded the extension of time fee paid on July 27, 2004.

JM Stone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON DC 20004

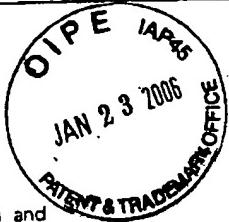


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MONTHLY STATEMENT
OF DEPOSIT ACCOUNT

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WASHINGTON DC 20004

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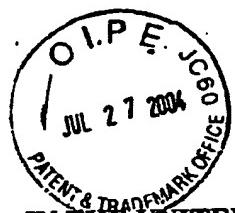
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061358
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Chicago, IL 60673

DATE POSTED MO. DAY YR.	CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO.	FEES CODE	CHARGES/ CREDITS	BALANCE	
10 4 05	5	2947057		6214	100.00	13034.74	
10 4 05	105	60483010		8007	20.00	13014.74	
10 5 05	5	2947057		6214	-100.00	13114.74	
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10 12 05	1	10415665	P68842USO	2202	25.00	12569.74	
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10 13 05	40	10505885		8021	40.00	12314.74	
10 13 05	349	10967305		1	8007	120.00	12194.74
10 14 05	1	10030076	P67506USO	1253	1020.00	11174.74	
10 14 05	158	60615594		8007	20.00	11154.74	
10 14 05	159	60615595		8007	20.00	11134.74	
10 14 05	269	60625115	11472/P70233USO	8007	20.00	11114.74	
10 19 05	7	10398513		P68756USO	2201	200.00	10914.74
10 21 05	213	10498516		P69853USO	8021	40.00	10874.74
10 24 05	6	10509950		P67772US1	1617	-130.00	11004.74
10 27 05	146	78695796		MGG	50.00	10954.74	
10 27 05	261	29234544		P70621USO	8513	180.00	10774.74
10 28 05	1	76477928		T33819	1806	300.00	10474.74
10 28 05	5	10110140		P68450USO	6004	330.00	10144.74

AN AMOUNT SUFFICIENT TO COVER ALL SERVICES REQUESTED MUST ALWAYS BE ON DEPOSIT	OPENING BALANCE	TOTAL CHARGES	TOTAL CREDITS	CLOSING BALANCE
	13134.74	3320.00	330.00	10144.74

*** O.D. INDICATES OVERDRAWN



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Confirmation Number: 1981

Osamu NAGAI et al.

Attorney Docket: P67506US0

Serial No. 10/030,076

Group Art Unit: 1752

Filed: January 10, 2002

Examiner: Hoa Van LE

For: GASKET FOR FUEL BATTERY AND METHOD OF FORMING THE SAME

PETITION FOR EXTENSION OF TIME

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Petition for Extension of Time for a three (3) month period. This Petition for Extension of Time is being concurrently filed with a Response. A Credit Card Payment Form (PTO-2038) authorizing payment in the amount of \$950.00 is enclosed. If the Examiner should find a discrepancy in the fees owed, please debit or credit Deposit Account No. 06-1358.

Adjustment date: 01/08/2007 SDIRETA1
07/28/2004 EABUBAKI 00000060 10030076 -950.00 OP
01 FC:1253

Respectfully submitted,
JACOBSON HOLMAN, PLLC

By

John C. Holman
John C. Holman
Reg. No. 22,769

400 Seventh Street, N.W.
Washington, D.C. 20004-2201
(202) 638-6666
Date: July 27, 2004
Atty. Docket No. 12407/P67506US0
JCH/jc

07/28/2004 EABUBAKI 00000060 10030076

01 FC:1253 950.00 OP

Refund Ref:
01/08/2007 0030036944

Credit Card Refund Total: \$950.00

Am Exp.: XXXXXXXXXXXX1000